

REMARKS

In the Office Action dated April 3, 2003, the drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because "they include the following reference sign(s) not mentioned in the description: 609, 800, & 980." Applicants respectfully note that reference number 609 is disclosed at paragraph 35 in the specification as 'top end 609' of the second cylinder 601. Reference number 980 is also disclosed in the specification at paragraph 53 as ventilation holes 980. Reference number 800 is now deleted from Fig. 8. Applicants request that the drawings be accepted.

The Examiner rejects claims 1-27. Upon entry of the foregoing amendments, claims 1-2, 6, 8-12, 15, 18, 21, 23, 27-30, 32, and 36-37 are amended. Claims 1-2, 6, 8-12, 15, 18, 21, 23, 25-30, 32, and 36-37 (three independent claims; 21 total claims) remain pending in the application. Support for the various amendments may be found in the originally filed specification, claims, and figures. No new matter has been introduced by these amendments. Reconsideration of this application is respectfully requested.

Claims 1-37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over either U.S. Patent No. 6,068,384 ("Tyson") or U.S. Patent No. 5,908,236 ("Lueken") in view of U.S. Patent No. 5,823,664 ("Demshki"). With regard to claims 1 and 18, the Examiner stated that either Tyson or Lueken discloses a housing, a lamp fixture, and a positioning assembly supported by the housing and positioning the lamp fixture, wherein the positioning assembly is configured to allow rotational positioning of the lamp fixture. The Examiner noted that Tyson and Lueken do not disclose the ability to provide linear positioning of the lamp fixture. The Examiner states, however, that Demshki teaches linear adjustment of the lamp fixture, in addition to rotation and yaw adjustment. The Examiner claims that two apertures on the upper support section of Figure 8 in Tyson allow height adjustment of the lamp fixture, and that therefore the combination of Tyson or Lueken with Demshki is proper. Applicants respectfully traverse the rejection.

Tyson and Lueken generally disclose outdoor lamp assemblies that are typically and primarily located below grade. Demshki generally discloses a recessed interior lighting fixture, or downlight, for use on sloped ceilings. Applicants submit that the prior art of record contains no suggestion or motivation to combine the references as proposed by the Examiner. The Examiner's reference to the two apertures (Figure 8 of Tyson) does not support combination of the reference with Demshki. Figure 8 does not clearly show the purpose of the two holes, nor

does the specification allude to their purpose. Nevertheless, even if the proposed combination were made, Applicants submit that the invention of amended claims 1 and 18 would not be disclosed.

With respect to claim 1, the references do not disclose a lid configured to support the lamp fixture, but rather a lamp fixture supported by the housing. Tyson discloses a lamp module 120 that is supported by support ring 50 on the inner ridge 40 of housing 10. Similarly, Lueken discloses a lighting system 150 attached to lamp housing 20 via adjustment bracket 180, mounting ring 155, and lip 55. Moreover, Demshki discloses an adjustable socket assembly 22 which is attached to housing 12 via strap 52, bracket 50, and trim collar 28. Thus Tyson, Lueken and Demshki each disclose a lamp fixture attached to the housing

In contrast, amended claim 1 of the present invention recites, "a lid configured to support the lamp fixture" and "a linkage assembly connected to the lid and supporting the lamp fixture, ... wherein the first assembly is configured such that the step of removing the lid also removes the linkage assembly and the lamp fixture." Thus, Tyson, Lueken and Demshki, alone or in combination, do not disclose each and every element of amended claim 1.

Again, with respect to claim 1, and as an independent basis of patentability, the references do not disclose a slidably, non-fixedly attached lid. Tyson, Lueken and Demshki each of disclose fixedly attached coverings over the light emitting end of the housing, and for that matter coverings that are not slidably adjustable, relative to the housing, without removing screws or the like. In each reference, the method of attachment is somewhat cumbersome and time consuming and adjustment first requires unscrewing or unclamping one or more devices.

For example, Tyson discloses multiple components which make up the upper portion of the "lamp assembly" including: lens 126, mounting flange 128, lens gasket 130, reducing ring 132, support ring 50, and grill 66, to name a few. As best understood, these parts are individually applied and secured to the light emitting end of the lamp assembly. Furthermore, Tyson discloses clamp band assembly 134, clamp band screw 135, pin 136, key 148 and other elements for fixedly attaching the multiple components (on the light emitting end of the lamp assembly) to the lamp assembly. As best understood, once the lamp assembly disclosed by Tyson is assembled, the top portion, as well as the internal lamp portion, can not be rotated unless at least some of the lamp assembly is disassembled, screws are removed, pins or keys are moved, or the like.

Similarly, Lueken includes lens 35, lens frame 40, lens gasket 45, and lens frame screws 60 which, when assembled, fixedly attach these elements such that access to internal components and/or rotation of the elements on the light emitting end of the housing requires some disassembly and unscrewing. These actions are somewhat time consuming and cumbersome.

Finally, it is noted that Demshki discloses a recessed lighting fixture that is not constructed for full internal access from the light emitting end of housing 12. Figure 1 of Demshki shows the wall-board behind which lighting fixture 10 is recessed. Aside from changing light bulbs and minor adjustment of the angle of the light, access to the internal components appears to be limited to access from above the ceiling, e.g., from the attic space. In any event, the device of Demshki is most often adjusted when installed and is not likely to be adjusted after installation. Thus, Demshki discloses an inaccessible and fixed covering at the light emitting end of housing 12.

In contrast, the light fixture of the present invention may facilitate a very simple method for adjusting the lid and lamp and for access to the lamp (i.e., merely lifting the lid). Thus, amended claim 1 is patentable because Tyson and Lueken, alone or in combination with Demshki do not teach, advise, or suggest "wherein the lid is held in vertical contact with a first end of the housing by gravity alone, and wherein the lid is configured in slidable contact with the housing" or "wherein the first assembly is configured such that the step of removing the lid also removes the linkage assembly and the lamp fixture."

Thus, Applicants submit that each and every element of amended claim 1 is not anticipated or rendered obvious by Tyson, Lueken, and/or Demshki, alone or in combination. Accordingly, amended claim 1 (and claims 2, 6, 8-12, and 15 which variously depend from claim 1) is not obvious, and Applicants respectfully request the withdrawal of the rejection of claims 1-2, 6, 8-12, and 15 under 35 U.S.C. §103.

With respect to claim 18, the Tyson, Lueken, and/or Demshki do not disclose a low voltage lamp fixture or a positioning assembly that is configured to allow moisture to enter the housing. In general each of Tyson, Lueken and Demshki also discloses line voltage devices. This is evidenced by the transformer referred to in Tyson (Col. 6, line 9), and ballast assemblies of Lueken (Col. 1, lines 23-24.)

Furthermore, each of the exterior landscaping models appear to be designed to reduce the infiltration of moisture. For example, Tyson (Col 3, lines 13-15) states that the "splice box

includes a lid 28 and is enclosed in a conventional manner so as to prevent moisture intrusion.” Tyson also specifies a lens gasket 130. In addition, Lueken teaches a lens gasket 45 that provides a seal. (Col. 3) In addition, Lueken teaches a junction box 65 and ballast box 75 that are water proof and provided with anti-syphon barriers 95b. (Col. 3, line 64 – Col. 4, line 8.)

In contrast, amended claim 18 recites “a lamp fixture, wherein the lamp fixture is configured to be a low voltage lamp fixture; [and] a positioning assembly, ... wherein the positioning assembly is configured to be received by a housing, and wherein the positioning assembly is configured to allow moisture to enter the housing” (emphasis added.) Thus, Applicants submit that each and every element of amended claim 18 is not disclosed in Tyson or Lueken, alone or in combination with Demshki. Accordingly, amended claim 18 (and claims 21, 23, 25-30, 32, and 36 which variously depend from claim 18) is not obvious, and Applicants respectfully request the withdrawal of the rejection of claims 18, 21, 23, 25-30, 32, and 36 under 35 U.S.C. §103.

In addition to being patentable as dependent upon patentable claims, claims 6, 10-12, 15, 23, 27-30, 32, and 36 are not anticipated by Tyson or Lueken, alone or in combination with Demshki for a variety of independent reasons.

For example, the Examiner rejects claims 6 and 23 under 35 U.S.C. §103 as obvious stating that both Tyson and Lueken disclose that the lid further comprises a window, and the window comprises a glass covering configured to be recessed relative to a top surface of the lid of the positioning assembly, wherein the lid comprises a weep hole, and wherein the lid is configured to drain water off the surface of the glass covering through the weep hole. Applicants traverse the rejection.

Contrary to the Examiner’s assertion, Tyson illustrates that the glass (126) is slightly higher than the upper surface of the light fixture (see, e.g., Figures 1, 2, and 5). Because the glass is not recessed, Tyson also discloses no weep holes for draining water off the surface of the glass. Similarly, Lueken illustrates that the glass (35) is slightly higher than the upper surface of the light fixture (See, e.g., Figures 1, 2, 4, and 10). Furthermore, neither reference discloses a lid. The glass itself is not a lid.

Thus, amended claim 6 is independently patentable because Tyson and Lueken do not teach, advise or suggest “wherein the lid further comprises a window and wherein the window comprises a transparent covering configured to be recessed relative to a top surface of the lid of

the positioning assembly, wherein the lid comprises a weep hole, and wherein the lid is configured to drain water off the surface of the transparent covering through the weep hole" (emphasis added). Amended claim 23 is independently patentable for the same reason. Accordingly, amended claims 6 and 23 are not anticipated or rendered obvious by Tyson and Lueken alone or in combination with Demshki, and Applicants respectfully request the withdrawal of the rejection of claims 6 and 23.

Next, the Examiner rejects claims 10 and 27 as obvious under section 103 stating that both Tyson and Lueken disclose the housing further comprises a collar configured to be fixably attached to a cylinder. Applicants respectfully traverse the rejection.

Tyson discloses a housing 10 made up of pieces 12 and 14 which completely form the lateral sides of the device. Tyson does not disclose a collar, much less a pour collar. Lueken similarly discloses lamp housing 20 as being the only side piece of the lamp assembly that is configured for below grade installation. Lens frame 40 is not a pour collar. Lens frame 40 is consistently illustrated (see Figures 2, 4, 6, 8, and 10) above the grade level. Furthermore, lens frame 40 would not function well as a pour collar. For example, it would be difficult to take the lens frame off and put it back on if lens frame 40 were installed at grade level and cement, dirt or some other substance were poured up against the side of lens frame 40.

Thus, amended claim 10 is patentable because Tyson and Lueken do not teach, advise or suggest "a pour collar." Amended claim 27 is patentable for similar reasons. Accordingly, amended claims 10 and 27 independently are not anticipated or rendered obvious by Tyson and Lueken alone or in combination with Demshki, and Applicants respectfully request the withdrawal of the rejection of claims 10 and 27.

Furthermore, the Examiner rejects claims 11 and 28 as obvious under section 103 stating that both Tyson and Lueken disclose "the collar is configured to attach to the housing on both the outer and inner surfaces of a first end of the cylinder. Applicants respectfully traverse the rejection.

Tyson and Lueken at most disclose various elements connected to the top and/or inner surfaces of the lamp housing. Thus, amended claim 11 is patentable because Tyson and Lueken do not teach, advise or suggest "wherein the housing further comprises a collar configured to be fixedly attached to a cylinder, and wherein the collar is configured to attach to the cylinder on both the outer and inner surfaces of a first end of the cylinder" (emphasis added). Amended

claim 28 is patentable for similar reasons. Accordingly, claims 11 and 28 independently are not anticipated or rendered obvious by Tyson and Lueken alone or in combination with Demshki, and Applicants respectfully request the withdrawal of the rejection of claims 11 and 28.

Next, the Examiner rejects claims 12 and 29 as obvious under section 103 stating that both Tyson and Lueken disclose "the housing has an open end." Applicants respectfully traverse the rejection.

Tyson and Lueken both disclose a housing that has one end configured for receiving a lens through which light may pass. This lens covers that end of the housing. Both references, however, disclose the opposite end of the housing as closed. See, e.g., Tyson, Figures 1 and 2, and Lueken, Figures 2 and 4.

Thus, amended claim 12 is patentable because Tyson and Lueken do not teach, advise or suggest "wherein the lid is held in vertical contact with a first end of the housing" and "wherein the housing has a second end and wherein the second end is configured to be an open end" (emphasis added). Amended claim 29 is similarly patentable because Tyson and Lueken do not teach, advise or suggest "wherein the housing has an open end opposite the end of the housing that is configured to receive the positioning assembly." Accordingly, amended claims 12 and 29 independently are not anticipated or rendered obvious by Tyson and Lueken alone or in combination with Demshki, and Applicants respectfully request the withdrawal of the rejection of claims 12 and 29.

Next, the Examiner rejects claims 15, 32 and 36 as obvious under section 103 stating that both Tyson and Lueken disclose "a lamp fixture body, a lamp, and a reflector, wherein the reflector is configured to reflect light from the lamp and wherein the lamp fixture body is configured with a support shelf for supporting the reflector." Applicants respectfully traverse the rejection.

Tyson and Lueken each disclose a reflector and a lamp located within the cavity of the housing. In Tyson, the reflector appears to be in contact with the lens of the overall lighting assembly. In Lueken, the reflector assembly is wholly exposed in the cavity of the housing. In neither reference is there disclosed a lamp fixture body comprising a lamp base, a lamp cap, and an o-ring disposed between the base and cap.

Thus, amended claim 15 is patentable because Tyson and Lueken do not teach, advise or suggest "a lamp fixture body" comprising "a lamp fixture cap" and "a lamp fixture base" that are

"configured to slideably connect to each other with at least one O-ring between the lamp fixture cap and lamp fixture base." Amended claim 32 and claim 36 are patentable for similar reasons. Accordingly, claims 15, 32 and 36 are not anticipated or rendered obvious by Tyson and Lueken alone or in combination with Demshki and Applicants respectfully request the withdrawal of the rejection of claims 15, 32 and 36.

Next, the Examiner rejects claim 30 as obvious under section 103 stating that both Tyson and Lueken disclose a positioning assembly that is removable from the housing. Applicants respectfully traverse the rejection.

Tyson and Lueken each disclose a housing with various pieces that may be individually attached to and detached from the housing. Tyson and Lueken do not disclose a unit comprising a lid, a linkage assembly and a lamp fixture. Furthermore, Tyson and Lueken do not disclose removing the lid, linkage assembly and lamp fixture, as a unit, from the housing.

Thus, amended claim 30 is patentable because Tyson and Lueken do not teach, advise or suggest "wherein the positioning assembly and lamp fixture are removable from the housing as a unit, and wherein the unit comprises a lid, a linkage assembly and the lamp fixture." Accordingly, claim 30 is not anticipated or rendered obvious by Tyson and Lueken alone or in combination with Demshki and Applicants respectfully request the withdrawal of the rejection of claim 30.

The Examiner also rejected claim 37 as obvious under section 103. The Examiner stated that "to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961)." Applicants traverse the rejection.

First, Applicants respectfully note that *Ex parte Pfeiffer* has been strongly criticized if not over-ruled. See, *Ex parte Zeigler*, 1996 WL 33103161 (Bd. Pat. App. & Interf.) (1996) ("This court made it clear in *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995) that there are no per se rules when determining obviousness under 35 U.S.C. §103. ... To paraphrase the court in *Ochiai*, 71 F.3d at 1570, 37 USPQ2d at 1132, 'there are not [*Pfeiffer*] obviousness rejections ... but rather only section 103 obviousness rejections.'"); *Ex parte Kirkland*, 1997 WL 1883814 (Bd. Pat. App. & Interf.) (1997) ("all limitations must be considered and that it is error to ignore specific limitations distinguishing over the references."); and *Ex parte Holderness*, 2002

WL 130554 (Bd.Pat.App & Interf.)(2002). Thus, the Examiner's reliance on Ex parte Pfeiffer is misplaced, and Applicants request reconsideration of amended claim 37.

In any event, the elements of method claim 37 must be given weight because the recitation plainly affects the claimed method in a manipulative sense. In addition, Tyson does not disclose any relative elevation or pitch adjustment capability relative to a lid. Also, Lueken does not disclose any relative elevation adjustment capability relative to a lid. Instead, at most these references disclose adjustment capability relative to the housing. Similarly, Demshki discloses, at most, adjustment capability relative to the housing.

In contrast, the lighting fixture of claim 37 recites elevation and pitch adjustments relative to a lid, when the lid is not in place on the housing. Thus, amended claim 37 is patentable because Tyson and Lueken do not teach, advise or suggest "adjusting the elevation of a lamp fixture relative to a top surface of a lid while the lid is not placed on the housing" or "adjusting the pitch of the lamp fixture relative to the top surface of the lid while the lid is not placed on the housing." Accordingly, claim 37 is not anticipated or rendered obvious by Tyson and Lueken alone or in combination with Demshki and Applicants respectfully request the withdrawal of the rejection of claim 30.

Conclusion

In view of the above remarks and amendments, Applicants respectfully submit that pending claims 1-2, 6, 8-12, 15, 18, 21, 23, 25-30, 32, and 36-37 properly set forth that which Applicants regard as their invention and are allowable over the cited prior art. Accordingly, Applicants respectfully request allowance of the pending claims. The Examiner is invited to telephone the undersigned at (602)382-6367 at the Examiner's convenience, if that would help further prosecution of the subject Application. Applicants authorize and respectfully request that any fees due be charged to Deposit Account No. 19-2814. **This statement does NOT authorize charge of the issue fee.**

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Respectfully submitted,

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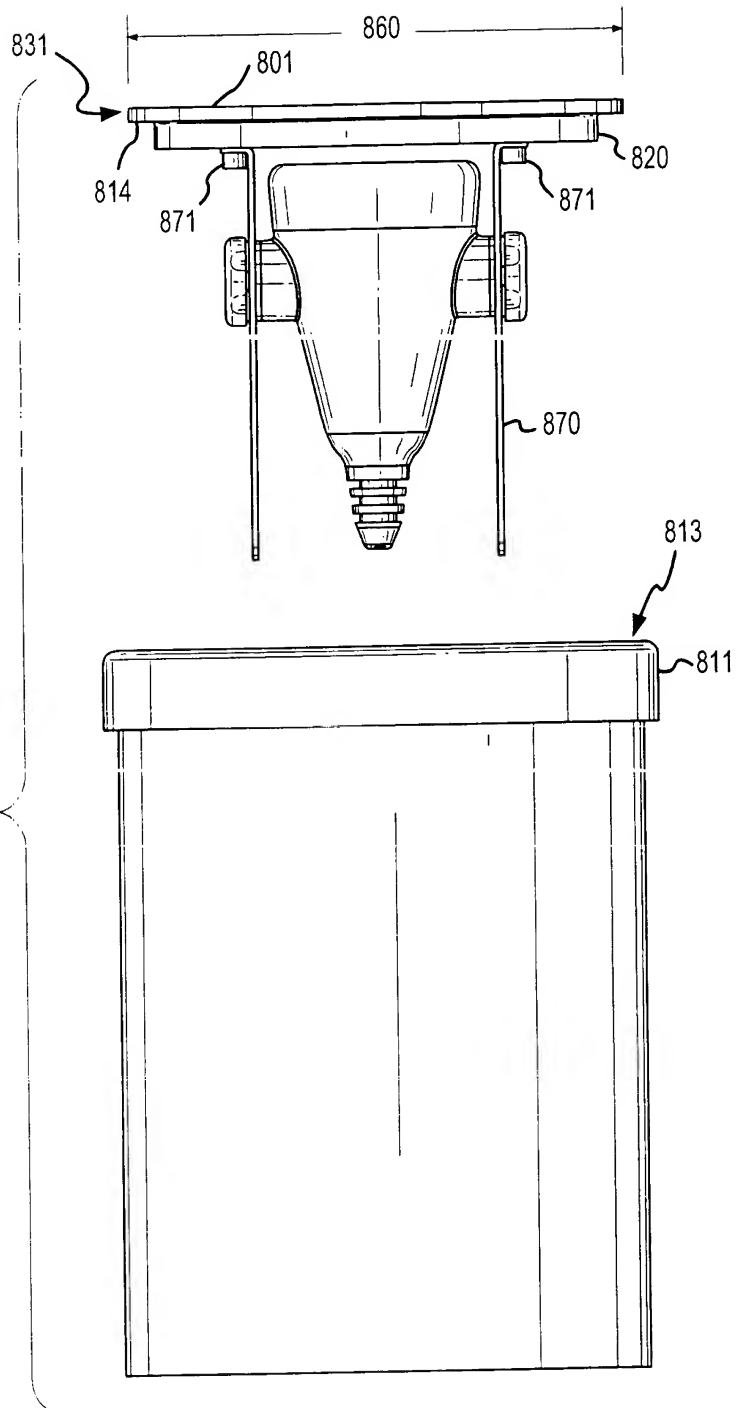


FIG.8